

**MEETING OF THE BOARD FOR PROFESSIONAL ENGINEERS, LAND
SURVEYORS, AND GEOLOGISTS**

**2535 Capitol Oaks Drive, Suite 300
Sacramento, CA 95833
(916) 263-2222**

Thursday, May 12, 2011, and Friday, May 13, 2011

Board Members Present: Mike Modugno, President; Jerry Silva, Vice President; James Foley; Carl Josephson; Philip Quartararo; Hong Boem Rhee; Ray Satorre; Patrick Tami; Michael Trujillo; Paul Wilburn; and Erik Zinn.

Board Members Absent: None

Board Staff Present: Joanne Arnold (Acting Executive Officer); Linda Brown (Administrative Manager); Celina Calderone (Board Liaison); Susan Christ (Staff Civil Engineer); Nancy Eissler (Enforcement Manager); Larry Kereszt (Enforcement Analyst); Tiffany Criswell (Enforcement Analyst); Joyce Hirano (Staff Civil Engineer); Ric Moore (Staff Land Surveyor); Debbie Thompson (Budget Analyst); and Gary Duke (Legal Counsel).

Thursday, May 12, 2011

1. **Roll Call to Establish a Quorum**
The meeting was called to order by President Mike Modugno at 9:15 a.m. Roll call was taken, and there was a quorum.
2. **Public Comment**
No public comment
3. **Public Hearing on the Continued Regulation of the Practice of Geophysics and Licensure of Professional Geophysicists**
4. **Continued Regulation of the Practice of Geophysics and Licensure of Professional Geophysicists**
The Board held this hearing as part of its sunset review at the direction of the Senate Standing Committee on Business, Professions and Economic Development. The Senate Committee specifically directed the Board to conduct a public hearing to receive input from the profession and other interested parties on eliminating the requirement for licensing of geophysicists in California. The Senate Committee further directed the Board to submit a report in June 2011 regarding the information presented at the hearing. In order to ensure that the

comments from the public are complete and accurate when submitted to the Senate Committee, The Board requested that all comments be submitted in writing. The Board will then include the written comments, as well as a summary of the oral comments presented in its report to the Senate Committee.

Tom Barry – Representing San Francisco AEG and Northern California Geological society. Mr. Barry indicated that he is a member of the Board's Geology TAC member. He commented on the background paper presented to the Senate Committee. His concern was that the background information does not accurately represent the function of geophysicists. Mr. Barry stated that the geophysicists had a 2005 Occupational Analysis that presented the work settings and the job focus of geophysicists which includes construction, environmental assessment, hazard evaluation, and land development. He added that a more appropriate recommendation would be to have a hearing on a more cost effective examination for geophysicists. He understands that the Board spent \$50,000 developing a new exam, and there could have been a more cost effective method.

Bill Black – Representing Northern California Geophysical Consultants. Mr. Black advised that he has been a registered Geophysicist since 1975; he served on the Board for Geologists and Geophysicists from 2002-2009. He expressed the importance geophysics plays in public safety. Geophysicists are involved in safety analysis studies, in particular Folsom Dam and the foundation of the Dam; they also are involved in evaluating levee stability, large structures such as power plants, high-rise buildings, schools, and hospitals. Geophysics is used to conduct studies to determine how structures will react under dynamic load during an earthquake. Mr. Black discussed the cost of the examination, the small population of examinees, and the difficulty in getting people to participate in the examination development. Since he served on the Board and was also on the exam committee, he is aware of what it takes to develop an exam and the costs involved. He suggested that the Board modify the existing exam, so it can be used repeatedly. He continued to say that there are only about 200 licensees and if you get 8 to come up with a legally defensible examination that is 4% of the licensee population. He added that the amount of geophysicists have diminished over the years and enrollment is down because funding for education is constantly being cut. Geophysics involves a lot of very expensive instrumentation. It costs schools a lot of money to purchase the equipment in order to teach geophysics courses and for that reason he believes many schools are eliminating the programs and it is why we are seeing the effects of the diminishing number of graduates.

Ken Blum – A California Registered Geophysicist and Geologist, established NorCal Geophysical Consultants 28 years ago. Mr. Blum stated that he works with State Government and Federal agencies, municipalities, water districts, and a very wide range of people in which services are provided. He indicated that there are several relatively local projects that include a structure repair that goes

from Rollins Lake to Auburn called the Bear River Canal. It supplies 150,000 residents with water, and officials are presently figuring out ways of trying to ration water until this repair can be made. NorCal Geophysical Consultants was hired by PG&E to act as a consultant to evaluate what geophysical methods could be used to investigate that 22 mile canal and to locate other potential slide areas and areas where there are voids under the concrete lining. With their recommendation, they will provide a rapid evaluation and indicate where to focus their efforts. Geotechnical engineers are hired to do drilling whereas geophysicists are providing the initial reconnaissance. He added that they work with the Department of Water Resources evaluating the stability of the levees, seepage zones, and the location of cutoff walls. Another example of geophysical work was during the Loma Prieta earthquake, specifically, the Oakland airport. They experienced liquefaction which created voids that developed under the concrete runways and taxi ways of the airport. The Port of Oakland enlisted their help to go out with ground penetrating equipment to locate these voids. He added that the Division of Dam Safety has a program where dams must be evaluated every 10 years. Geophysicists provide data that relates to the strength of the embankments and how they will react with ground shaking and acceleration due to earthquakes. These are services that the State is requiring, and registered geophysicists are called upon for their services.

Sandy Figuers - Mr. Figuers stated that he is a Registered Geophysicist, Geologist, Certified Engineering Geologists, Certified Hydrogeologist, and a Professional Engineer specializing in soils and landslides. He stated that the primary benefit is explaining and translating to professional engineers what geophysicists need. A good geophysicist begins to learn what the engineers really need. The Geophysicist Act has been very successful at keeping out ill prepared practitioners. As an example, instrumentation and interpretation software has greatly improved. He indicated he could give anyone an instruction manual and, within a half hour, they would be able to go into the field and produce a survey and take the survey and download it to the manufacturers software and come up with a diagram with great results with no basis. Many engineers use GPR testing for voids for bridges. If the Board does away with the geophysicist license, this group will greatly expand. NorCal Geophysical will still be contacted by CalTrans to do the large projects, as they are aware of the importance of a real geophysicist who will provide them with the proper data. The low level people who purchase \$20,000-\$50,000 worth of equipment can go out and practice; however, the Board will begin to receive complaints, and it may be shifted slightly as there is still a caveat in the Geology Act that geologists can practice geophysics as long as it is in their area of expertise. He continued to indicate that the low population of geophysicists is due to the cost of entry as it is quite expensive. The cost would start at \$500,000+ for basic equipment and another \$500,000 over the next couple of years and every 5-8 years to upgrade software which can cost \$10,000 just for the license. He suspects that if it is removed, it may take a couple of years but the Board may start seeing problems that licensure has prevented from occurring. Therefore, he encourages support.

James Rezowalli - Licensed Geophysicist, and former Board and TAC member. He indicated that the universities in Hayward, San Jose, Stanford, and Berkeley offer courses. The type of surveys he does are original/traditional geophysical surveys. An example of this work would be in the Blythe area where new solar electric plants are being built. Since a solar electric plant requires water, a geophysical survey on three proposed solar plants sites needed to be completed to determine the quality of water, the depth of the water, and from where the water was coming. The fact that Solar Millennium has their permit to build the first plant is due to the geophysicist's work. Infrastructure mapping is done to determine what is buried in the ground prior to construction. This has a very immediate effect to health and safety. Another example is the new Hetch Hetchy pipeline extending from one end of Fremont, under the Bay, to Redwood City. They were hired by the PUC to review construction diagrams and complete a field survey. One reason why he is employed is because the utility companies that he works with know that geophysicists will alert them if they are working too close to gas or petroleum lines. He added that he is not hired to find just the gas lines; he is employed as the eyes of the engineer out in the field to find things that may have escaped them through traditional record searches and land surveys. During construction of a pipeline, a trench was dug and a pipe followed behind it as to not have an open trench, but a backhoe hit a fuel line that spilled aviation fuel into the trench killing three men. His typical employers are large construction management firms, land developers, surveyors, and geologists. He does not work for the government or the petroleum industry; he does all civil works projects. When there are only have 2-3 candidates taking the examination, he does not believe it is highly critical that the examination be totally new each time and that the Board can safely draw from the existing bank. He added that he is a licensed blaster and takes the blasting test repeatedly every five years, and the test never changes. CalOSHA is comfortable administering the same exam every time. Occasionally, new exam questions are introduced involving new techniques or explosives, other than that; it is basically the same exam. Geophysics has not changed much in the last thirty years except for the data processing. Computer processing is only as good as the data input.

Mark Riches – Representing Geovision Geophysical Services. Mr. Riches indicate he has been in geophysics since 1992; he took the exam in 1999 and at the time there were only 3 applicants. He stated that it is a wrong impression if the Board thinks that geophysics is declining in California. The first 700 were grandfathered in from the oil industry and never practiced in the industry. He participated in 4 of the workshops. The basic problem he came up with is the exam development is scheduled in the summer which is their field work season. That is when geophysicists work the most and assisting with the exam would result in loss of income for them. He suggested that if the exam development occurred during January or February, the Board may have better cooperation. About 30% of their work is for State and Federal agencies. In particular, they do a great deal of work on the nuclear plants throughout the country. Information is provided so engineers can design a nuclear plant to withstand an earthquake

and prevent what happened in Japan which incidentally, was very successful as it was the tsunami that caused the damage and not the earthquake. The rest of their business revolves around schools, hospitals, bridges, dams, and levees. Much of their work involves locating underground utilities so that backhoe operators do not dig into them. He recalled an instance where a 500 pound bomb was located in Roseville. As it turned out, the first survey that was done that was supposed to locate them was done incorrectly by an unlicensed person. As a result, they missed the bomb, and there could have been a significant impact.

Alexander Jack – Mr. Jack stated that he is a Registered Geologist and Geophysicist and has been involved in the Board's examination development and field test. He suggests that the Board convert to a multiple choice examination. He added that if you graduate with a degree in geophysics you are hired before you graduate. The oil and mining companies are paying high dollar for these graduates. Companies in Panama and Dubai want licensed California Geophysicists. They are seeing engineering firms doing geology and geophysicist work and providing the information to a third party firm. The people processing this data were not in the field and are not aware of field conditions, which results in bad information coming in and bad information going out.

Bill Owen – Mr. Owen stated he is a Registered Geologist and Geophysicist. He is employed by the Department of Transportation both as a provider and consumer of geophysical services. He pointed out to the Board that the Department of Transportation requires as part of their contractual qualifications when evaluating those who do work for the Department that geophysical work be done by someone who has a license as a Professional Geophysicist. He stated that within the past five months he has reviewed three different instances, two of which were within the Department for Local Agency Assistance and one of them was consultation with the Board itself over unqualified personnel doing geophysical work. The two that were with the Department involved local agencies using geophysical information above and beyond the capacity for which the person was tasked in an attempt to design bridge structures in Southern California. The last one, he was contacted by the Board to review a proposal by another state agency for levee work to be performed where a conductivity survey was being specified by the consultant under contract to the State, specifically looking for a utility location company to go out and do specific geophysical surveys of levees and to provide a report on levee conditions. He added their concern as a Department, if the requirements for a Registered Geophysicist are removed, the Board may see more of these types of incidents occurring. From a Department standpoint, they utilize the geophysics registration as a minimal standard of competency. Mr. Owen believes the current downturn is due in part by the economy. He is seeing less work in the geotechnical and environmental fields that require geophysical registration and increased demand for oil and mineral resources. He indicated that the vast majority of those graduating with degrees in geophysics are not going into the geotechnical engineering consulting, but rather are going directly to research and exploration industries.

Steve Sterling – Mr. Sterling stated he is a Registered Geophysicist, Geologist, Certified Engineering Geologist, and Certified Hydrogeologist employed by the Department Toxic Substance Control. He stated that within the Department of Toxics, they require a licensed geophysicist for any type of geophysical reports submitted to the Department for review and site characterization for protection of the public. There is great potential for unlicensed people to practice this science inappropriately and incorrectly. This would continue in much greater fashion if licensing was abolished. In 2000, Mr. Sterling indicated that he was involved as an expert witness for the former Board for Geologists and Geophysicists which resulted in revocation of a license and two others being cited for unlicensed practice. In this case, a magnetometer was made in a garage and it was communicated to the City of Adelanto, near Palm Springs, that there were huge resources of ground water storage and that it would take 200 years to use 10% of water. The defendant was found guilty. The public was put into development projects where there is an inadequate water resource. Therefore requests continued support of licensure for geophysicists.

Craig Copelan - Representing PEGC. They support the continuation of licensure of geophysicists. The Department of Toxic Substance Control, the Department of Water Resources, and the State Water Resources Control Board all utilize geophysicists, and they are considered a valuable service to the public.

Hans Honeybrook – Representing Southwest Geophysics. He is a registered Geologist, Certified Engineering Geologist, Registered Geophysicist, and a Registered Geologist in Arizona as well. He indicated that their office is located in San Diego where significant work is being done in Arizona. They are sought after as Arizona does not carry registration for geophysicists and, therefore, are hiring California licensees as they recognize the level of competency that comes along with the registration. In many cases they fix other people's problems from those who attempted to practice geophysics. They work for lending institutions, environmental companies, and contractors.

Jerry Gash – Mr. Gash stated he is a Licensed Geologist, Geophysicist, and Engineering Geologist. He started his business in 1969 after leaving the Department of Water Resource and State Mining. He agrees with what has been said today. He added that there are geologists that are unlicensed and untrained in geophysics and engineers who are doing geophysics.

John Parrish – Mr. Parrish stated he is the California State Geologist, Chief of Geological Survey and prior was the Executive Officer for the Board for Geologists and Geophysicists. We license because the Board requires a minimum level of competency. California is the most seismically active state in the nation after Alaska. It's imperative that we have licensed geophysicists who can provide information to the structural engineering and the civil engineering communities to make the infrastructure and economy earthquake resilient.

Mr. Foley questioned what other states do that do not license geophysicists. Mr. Blum stated that many other states do not have the complex geological, environmental, and water conditions that California has. He added that the other states do not have the building codes that California has; they do not have the agencies that have the demands for registration. Mr. Riches estimated that the geophysics industry in California annually is in excess of \$20 million. Outside of Florida, New York, and Texas, the remaining states do not add up to \$1 million combined. Mr. Rezowalli said that California is heavily regulated, so consumers expect that. Mr. Figuers added that other states tolerate higher levels of incompetency.

Ms. Arnold indicated that the Board will forward comments to the Senate Business, Professions, and Economic Development Committee for review and consideration.

Mr. Foley pointed out that the licensure is at a cross roads and that those in attendance are the leaders in this regard; he suggested they ensure more participation to maintain this particular status to validate the examination.

Mr. Tami advised them to report unlicensed activity. If the number of enforcement cases goes up, we will have those numbers to point out unlicensed practice.

Mr. Foley believes the Board should provide information to the Senate Committee and suggests that geophysicists need to present the information as well.

Mr. Trujillo indicated that since cost of entry is so expensive, he suggested sharing and leasing equipment and software to reduce the cost.

Mr. Wilburn asked who would pick up the work if the geophysicist profession is deregulated. Mr. Parrish answered by indicating that you have to practice within your sphere of competency and many unqualified people would join the profession. Mr. Foley added that many engineering firms will have geotechnical engineers do the work.

Mr. Riches said that Texas offers reciprocity to California, but it does not work the other way around.

Mr. Foley asked if there is enough overlap where geophysics is tested on the Professional Geologist or Certified Engineering Geologist examination. Mr. Rezowalli said they are very different professions. Many colleges do not cross professions. However, Mr. Figuers disagrees as he received a degree in Geology and Geophysics.

Mr. Parrish suggested that one objective might be to expand who can be licensed, such as engineering seismologists, who play a large part in California. They could be brought into the geophysics profession.

Bob Holmgren representing OPES, indicated that the item bank is already created in which the Board has done a lot of work with development. The next exam would be less expensive. Mr. Moore pointed out that an Occupational Analysis needs to be done in the upcoming fiscal year in order to ensure that the examination is testing the appropriate areas of practice; this will add to the costs of examination development.

Mr. Foley suggested that the Board continues to review and make a decision at the next Sunset Review, perhaps a different method of licensure, and acquire more feedback from the geophysicist community about where they want to go with their profession.

Mr. Owen spoke with regards to the occupational analysis and how the exam was significantly revised several years ago.

Mr. Tami and President Modugno suggested appointing a subcommittee to review all of the comments and make a recommendation regarding how the Board should proceed. Mr. Silva and Mr. Zinn volunteered, and President Modugno appointed them to serve as the subcommittee.

Mr. Blum stated that he did not realize before today how apathetic the geophysicist profession was. He indicated he is determined to be more proactive.

President Modugno thanked everyone for their input.

5. **DCA Director Updates**

Cindy Kanemoto on behalf of Director Brian Stiger with the Department of Consumer Affairs updated the Board with items of interest. DCA continues to work with boards to submit exemptions to include justifications based upon the hiring freeze Executive Order. These exemptions are being reviewed by the Department, State and Consumer Services Agency, Department of Finance, and the Governor's Office. As previously stated, the Board must show how important a position is to the mission of the Board and the consequences of not filling positions. The exemption requests must have a very strong justification and a critical need must be shown. She is hopeful that the Board continues to have exemptions approved.

On April 26, 2011, the Governor issued an Executive Order placing restrictions on travel. No travel is permitted unless it is mission critical. The Executive Order is very specific that all discretionary travel must not be allowed. The Department will work with the boards to implement this order and ensure that the boards and bureaus are able to continue with their mission critical travel and comply with the Executive Order regarding all other travel. The Department is still waiting for the Department of Finance to release a budget letter which will provide more guidance to the boards and the Department on the implementation of this order.

The Department is getting ready to post its third set of performance measures on the Department's website. The Department encourages the members to review these measures as this is information available to the public. The Department also encourages the Board to not only have the performance measures in the agenda packet but also to provide time frames for the disciplinary process for the members to review.

The BreEZe project achieved a major milestone with receipt of final proposals in March. The proposals were evaluated for their technical and administrative merit as well as how well they met the DCA's business needs. The costs were higher than anticipated. DCA is looking at its options prior to vendor award and are in negotiations with the vendor. Final contract approvals from the Department of General Services and the Legislature will be secured between May and August and the contract is anticipated to begin August 2011.

Ms. Kanemoto added that the Department has received several requests from boards asking to increase salary for an Executive Officer. These requests must be approved by DPA and the Governor's Office. The Department wanted to ensure that all boards' EOs' salaries were reviewed to determine if the position was at the appropriate salary; there has not been a change to the overall salaries in the last 10 years. The Department has entered into a contract to review all EO salaries. This contracted company will conduct the entire study. Until this study is complete, the Department will not move forward with increasing Executive Officers' salaries. The Department is developing an EO evaluation form. They have a working group made up of Board members and an Executive Officer. They are anticipating the form will be completed by the end of May.

Ms. Kanemoto added that the Department encourages webcasting of Board meetings to assist in transparency and assisting those who cannot attend meetings.

President Modugno inquired about out-of-state travel and indicated that the Board has been severely handicapped by the inability to send representation to NCEES functions. When the Board is not physically present, we are not able to represent California's interests. He expressed that it is very crucial as we do not have a say in voting. Ms. Kanemoto said association and conference meetings are typically being denied. Ms. Arnold added that it is more than a conference as it is where decisions are being made about examinations without California's input. Ms. Kanemoto said that this climate may change by August. If travel is enforcement related, it is exempted and considered mission critical. Sacramento Board meetings are acceptable and regular travel in Sacramento is approved. A reduction in travel must result from the April 26th Executive Order and forward.

Ms. Arnold responded to Mr. Copelan's query regarding legislation to rename the Board in include Geologists and Geophysicists and clarified that the legislation added two Board members and not additional staff. A Budget Change Proposal

(BCP) was submitted for a Professional Geologist, but it was denied.

9. **Adoption of 2011-2013 Strategic Plan**

Vice-President Silva said Evin Van Outryve captured our vision for the Strategic Plan. President Modugno indicated that too often we have these documents and do not implement the goals. He thinks we should have a committee and select one objective and provide status reports.

Motion: Mr. Silva and Mr. Tami to adopt.

Vote: 10-0, motion carried

10. **Temporary Authorization Applications**

There were none.

11. **Executive Officer's Report**

A. Legislation

1. Discussion of Legislation for 2011: AB 172, AB 275, AB 958, AB 1023, AB 1210, SB 541, SB 543, SB 692, and SB 944

AB 275 Solorio. Rainwater Capture Act of 2011. This bill would enact the Rainwater Capture Act of 2011, which would, among other things, authorize landscape contractors, holding a specified classification, to design and install all exterior components of a rainwater capture system.

MOTION: Mr. Tami/Mr. Quartararo moved to support if amended.

VOTE: 10-0, motion carried.

AB 958 Barryhill. Regulatory boards: limitations periods. Existing law requires some boards within the Department of Consumer Affairs (DCA) to file disciplinary action accusations against licensees for various violations within a specified time. This bill would delete those specified limitations periods for each board and would instead impose a specified limitations period on all boards within DCA.

No action was taken on this item.

AB 1023 Wagner. Maintenance of the codes. This bill would make nonsubstantive changes to various provisions of law based on the recommendations made by the Legislative Counsel to the Legislature. This bill repeals Sections 6731.1, 6731.2, 8726.1, and 8761.1 of the Business and Professions Code.

No action was taken on this item.

AB 1210 Garrick. Civil Engineering. This bill adds Section 6730.4 to the Professional Engineers Act, relating to water quality.

MOTION: Mr. Tami/Mr. Josephson moved to support.

VOTE: 10-0, motion carried.

Mr. Foley arrived at 9:47 a.m.

SB 541 Price. Regulatory Boards: expert consultants. This bill would authorize the boards of DCA to continue to utilize expert consultants, as done in the past, without going through formal contracting process.

MOTION: Mr. Tami/Mr. Foley moved to support.

VOTE: 11-0, motion carried.

SB 543 Price. Business and professions: regulatory boards. This bill extends the sunset dates for various DCA regulatory boards and bureaus that are being evaluated by the Joint Sunset Review Committee. It also makes various changes to the Professional Engineers, Land Surveyors', and Geologist and Geophysicist Acts.

No action was taken on this item.

SB 692 Walters. Professional Engineers. This bill would change the disciplines currently licensed as "title act" engineers to "practice act" engineers.

No action was taken on this item.

SB 944 Senate Business Professions & Economic Development Committee. This is one of the Committee's Omnibus bills. It will be amended to include some minor changes to the Professional Engineers Act and the Professional Land Surveyors' Act.

MOTION: Mr. Foley /Mr. Tami moved to support.

VOTE: 11-0, motion carried.

2. Legislative Proposals for 2011

A. Proposed Amendments to the Geologist and Geophysicist Act (Business and Professions Code section 7800, et seq.) Relating to Qualifications for Certification as a

Geologist-in-Training

Ms. Eissler reported on this item. In reviewing the Geologist and Geophysicist Act, it was realized that while it mentions what examination the person needs to pass in order to obtain certification as a Geologist-in-Training, it did not include the qualifications that are needed to obtain the certification. It is recommended that a section be added to the Geologist and Geophysicist Act to specify what the qualifications would be. When this was originally done several years ago by the former Board for Geologists and Geophysicists, the candidate would have to have a degree in a geological science from a college or university the curriculum of which has been approved by the Board. It is recommended that language to this effect be added. It is also recommended that language be added to the Geologist and Geophysicist Act that is similar to the language in the Professional Engineers Act and the Professional Land Surveyors' Act that would allow the Board to make arrangements with a public or private organization to conduct the examinations. ASBOG which is the national association similar to that of NCEES that developed some of the geology examinations has indicated that they would administer examinations on behalf of the Board just as NCEES would do. Language needs to be included in the Geologist and Geophysicist Act to address that need.

MOTION: Mr. Foley /Mr. Zinn moved to direct staff to pursue such legislation.

VOTE: 11-0, motion carried.

B. Sunset Review 2010

Ms. Arnold stated that the Board submitted a report at the request of the Senate Committee on Business, Professions and Economic Development following the hearing. A report of the geophysicist hearing and the recommendations that resulted from that hearing will be submitted as well.

C. Personnel

No changes to report.

D. Governor's Executive Order B-06-11 Relating to Travel

Ms. Arnold stated that she and President Modugno suggest holding teleconference Board meetings solely to review the enforcement decisions in Closed Session in between regularly-scheduled Board meetings to help cut down on the need for travel and for two-day meetings because of the increased number of enforcement decisions. Mr. Foley recommended that the Board continue face-to-face meetings. Ms. Arnold stated that teleconferences are better than a mail ballot for enforcement matters,

which the Department is encouraging.

8. **Nomination and Election of President and Vice President for Fiscal Year 2011-2012**

Mr. Foley nominated Jerry Silva for President and Paul Wilburn for Vice President

MOTION: Mr. Foley/Mr. Quartararo moved to elect Mr. Silva as President and Mr. Wilburn as Vice President.

VOTE: 11-0, motion carried.

12. **Enforcement**

Ms. Eissler indicated that the statistics contained in the agenda packet are for the Engineering and Land Surveying cases and in handouts that were provided; she had prepared charts for the Geologists and Geophysicists Program for their enforcement statistics. She noted that the Program received 10 new complaints from January through June 2010; closed two cases; and had 97 complaints pending investigation at the end of FY09-10. So far for this fiscal year (July 2010 through April 2011), 22 new cases have been opened and 29 cases have been closed; there are 90 that are pending. Mr. Zinn expressed concern for the 90 that are pending. Ms. Eissler indicated that when the Board took over Geology's cases there were concerns as to how those cases were handled previously, and, therefore, the investigations had to start over. The Program is now getting to the point where the cases have been fully investigated and, therefore, are starting to see more being closed. Within the next couple of months citations will be issued and becoming final. When citations are issued, the people have the right to appeal; therefore, some have not become final. In other cases, the matters will be submitted to the Attorney General's Office for formal disciplinary action against licensees. She believes that the Program is getting on track with all the cases. Larry Kereszt, from the PELS Enforcement Unit, is working with Corrine Gray, Enforcement Analyst from the Program. Ms. Eissler noted that only position was received through the transition for the Program's enforcement section. Both Mr. Kereszt and Ms. Gray are working at getting the cases moving and on track. Mr. Zinn said that the TAC used to assist with enforcement cases, to which Ms. Eissler responded that it may create some problems if it is something where the Board was going to take action against the person where we need an independent expert rather than the opinion of someone that has been appointed to a committee by the Board. She went on to say that the Board does not have a staff geologist position but does have people that can be utilized as experts to do preliminary reviews. The Board will have to contract with experts for enforcement now, but the Senate Bill will streamline that process and make it much faster than the existing contracting process. The Board wants to make sure the subjects are given proper due process rights throughout the investigation and not jump to judgments.

Mr. Tami suggested an “aging of the cases” report for future agendas, such as the reports that are submitted to the Department.

Ms. Eissler explained that the time period for complaint investigations includes time at the Division of Investigation (DOI) since the Enforcement Unit does work both prior to submission to DOI and after the investigative report is received from DOI. The Enforcement Unit has always traditionally separated that aging from how long a case is at the Attorney General’s Office or how long it takes to go through the citation process. The statistics that the Department is now requesting and reporting combines the entire timeframe encompassing the Board’s investigation and either the citation portion or the formal disciplinary portion through the Attorney General’s Office.

Ms. Eissler added that in March and April many cases were opened due to examination subversion issues and others were from complaints relating to alleged failures to file record maps that were received from various County Surveyors’ Offices; therefore, the number of cases opened in those months was higher than usual. Ms. Eissler noted that one Enforcement Analyst handles all of the examination subversion cases.

13. Examinations/Licensing

C. October 2011 Examination

Ms. Arnold indicated that the NCEES contract went to the Department of General Services on May 10 and the Spring Finance Letter went through the Assembly and the Senate at last week’s budget hearing.

President Modugno suggested if we do not have a contract June 1 with NCEES that the October national examinations are cancelled. Mr. Moore added that if a contract is not in place, NCEES would not send the Board examinations to administer; however, state specific examinations would remain in place and be administered.

President Modugno suggested that a motion be made that if the Board does not have a contract by June 1, 2011, the October National examinations will be cancelled. Mr. Wilburn stated that he believes that this is a bad call and the Board should wait to communicate with NCEES. Mr. Duke indicated he will be contacting the Department of General Services’ attorney immediately to emphasize the importance to the Board and the industry. Ms. Kanemoto recommended abiding by what Mr. Duke said before making any decisions on the cancellation of the October examinations. She pointed out that one of her roles in the Department is as the Chief of Licensing for Job Creation and this issue is of importance to her to ensure that we get applicants through this process of licensure as efficiently and effectively as possible so that we can get them contributing to the economy. She will speak with Director Stiger as soon as possible regarding this matter. Mr. Tami stated that he does not

want to take advantage of the relationship the Board has with NCEES by asking them to extend the final date in which the contract is to be signed; he suggested not taking action on this right now. President Modugno withdrew his suggested motion, and no action was taken.

A. Report on April 2011 PELS Examination Administration

Mr. Moore stated that there were less than 12,000 applicants approved for the examination, and 9,800 actually attended. This made for a 17% no-show rate. The Fundamentals of Engineering examination had a 20% no-show rate, and the Land Surveyors had an 11% no-show rate. 115 candidates signed up to take the new 16-hour National Structural examination. He added that there are two basic modules for this examination, one for buildings and the other for bridges; out of 115 candidates, 112 signed up for the buildings module. For this examination, there was a 24% no show rate, which was the highest no-show rate for all the examinations. There were minimal candidates who had to be turned away due to tardiness and 30 removals from all sites combined. Mr. Moore reported that Director Stiger and Chief Deputy Director Kim Kirchmeyer both assisted by coordinating with other staff within DCA and had about 10 people to assist with proctoring. There were two representatives from NCEES who visited the exam sites; Jerry Carter was in Pomona and San Diego, and Tracy Snyder was in Sacramento and San Mateo. Ms. Snyder indicated that she was very impressed by the sites she attended, considering the volume of candidates. Mr. Moore indicated that some examination results could be released in early June; the National Structural and the State Land Surveying results may be released in July as there is a more intensive grading process.

Mr. Moore advised that registration with NCEES for the October 2011 exams opens June 15 and closes September 9. The Board's final filing dates for brand new professional engineer and land surveyor applicants is July 8 and for all refile applicants and for all new EIT or LSIT applicants is August 12. The examination sites remain the same as in April.

B. Report on March 2011 Geology Examination Administration

Ms. Brown indicated they had an overall 50% + for the pass rate but was not aware how they compare nationwide.

14. Consideration of Rulemaking Proposals

A. Proposed Amendments to Title 16, California Code of Regulations Sections 419, 443, and 444 – Examination Appeals

Mr. Moore indicated that the Board's regulations provide for review and appeals of examinations that are design essay examinations but not for multiple choice examinations. This includes a portion of the State Structural, the State Land Surveying examination, and a portion of the National Structural. As we move towards Computer Based Testing (CBT),

the only examination that will include a design essay portion is the new National Structural exam. The morning portions are multiple choice, and the afternoon portions of both days are essay. According to the Board's regulations, we allow applicants within 8 points of a passing score on an NCEES exam to appeal. Candidates can review their examination, comment, and write an appeal, and the information is passed onto NCEES. With the National examinations, the Board is not cognizant of the passing score and, therefore, not aware who is eligible to appeal. When results are released, NCEES is provided information from the Board's laws and, in turn, provides the Board with a list of the candidates eligible to appeal. The applicants are then notified of their right to appeal. NCEES sends the examination problems where they were deficient to the Board office and allows the candidates to review and appeal. The Board then returns the information to NCEES to consider the appeal. With the new examination, the design essay portion is not scored separately from the multiple choice portion; it is a combined score. There appears to be a possibility that NCEES will not be able to determine who is eligible to appeal under the requirements specified in the Board's regulations.

Mr. Josephson added that the way NCEES has scored the essay examination in the past is similar to the way that California has scored the state exams in the past. There is a straight percentage for the essay portion. The new Structural exam is not being scored that way. Mr. Josephson explained that there is a very complex method of scoring the individual problems; it is a hybrid grading system that is meant to take as much subjectivity out of the examination grading as possible. He added there are 2-3 states that allow examinees to look at the essay examination results. Mr. Moore said it appears that the examinations are outgrowing the regulation. He is requesting the Board approve the proposed amendment to Board Rule (c) (1) to eliminate the section which allows for appeals of a National examination.

MOTION: Mr. Foley/Mr. Tami moved to amend Board Rule 443 as recommended.

VOTE: 11-0, Motion carried.

B. Adoption of Proposed Amendments to Title 16, California Code of Regulations section 3005 – [Geology & Geophysics Fees]

This relates to the pending rulemaking proposal regarding the geology examination fees. Ms. Eissler indicated that we received no written comments during the 45-day comment period. The Board conducted the public hearing the morning of the Board Meeting and received one comment from PECG that they are in support making the fees appropriate to what the Board is charged. Since there have been no comments that are substantive or in opposition to the proposal, she recommends that the

Board adopt the proposed changes as they were noticed and direct staff to finalize the rulemaking file for submittal to the Department of Consumer Affairs and the Office of Administrative Law. She also requested that the Board delegate the authority to the Executive Officer to finalize the rulemaking file.

MOTION: Mr. Foley/Mr. Quartararo moved to adopt the proposed amendments and to delegate the authority to the Executive Officer to finalize the rulemaking file.

VOTE: 11-0, Motion carried.

15. Approval of Delinquent Reinstatements

MOTION: Mr. Tami/Mr. Foley moved to approve the Delinquent Reinstatements in the agenda as follows:

CIVIL

RICE, JOHN

Reinstate applicant's civil license once he/she takes and passes the Board's Laws and Regulations Examination, and pays all delinquent and renewal fees.

GEOTECHNICAL

RICE, JOHN

Reinstate applicant's geotechnical license once he/she takes and passes the Board's Laws and Regulations Examination, and pays all delinquent and renewal fees.

MECHANICAL

AHMED, ABDULLAH Y.

Reinstate applicant's mechanical license once he/she takes and passes the Board's Laws and Regulations Examination, and pays all delinquent and renewal fees.

VOTE: 11-0, Motion carried.

16. Information Technology Updates

A. On-Line Renewals/Credit Card Renewals

Mr. Donelson indicated that the Department has decided to change the clearing house company for the credit cards and, therefore, had to amend the contract which will result in a 3-6 month delay. The reason behind the change is that the Department will receive better customer service and the company is based in Sacramento. Mr. Tami reiterated that every month that goes by in not having this service in place, it is tens of thousands of dollars in costs to the Board in staff time by not accepting credit cards.

17. Adoption of a Precedential Decision Regarding the Provisions of the Professional Land Surveyors' Act (Business and Professions Section 8700,

et seq.) and Division 5 of Title 16 of the California Code of Regulations Relating to the Filing of Records of Survey and Corner Records

Mr. Duke stated that a Proposed Decision was discussed by the Board at the March Board meeting. At that time, he suggested to the Board that they may want to make the decision a precedential decision. What this means is that under similar facts and circumstances, future Administrative Law Judges will be incumbent to use the Precedential Decision of the Board as authority. He indicated that the Board has had many similar cases with similar facts that have come to the Board in the past, and he recommended the Precedential Decision since there are many similar cases that can be handled in this manner in the future.

MOTION: Mr. Foley/Mr. Tami moved to adopt the Decision in the Matter of Accusation No. 833-A as a Precedential Decision.

VOTE: 11-0, Motion carried.

18. Administration

A. Fund Condition

The Professional Engineer's and Land Surveyor's fund revenue had a 12% decline partly due to the normal cyclical pattern in the 2-year renewal cycle in which revenue drops every other FY. The Professional Engineers and Land Surveyors application revenue had a 9% drop due to the drop in the number of applications received for licensing examinations. Recently proposed regulation changes for the NCEES to take over the Professional Engineers and Land Surveyors national exam administration (Board Rule 407) will reduce revenue by approximately the same amount as expenditures.

The Geology and Geophysics Fund had a 3.5% decline which includes a 32% decrease in licensing exam application revenue and a 5% increase in license renewal revenue. The geologists and geophysicists license renewals also follow a normal cyclical pattern in the 2-year renewal cycle in which revenue drops every other fiscal year with this fiscal year having the higher revenue.

It is projected that by 2012-2013, the Professional Engineer's and Land Surveyor's Fund will have less than a one-month reserve due to the recently required \$5 million General Fund loan.

The Geology and Geophysics Fund is projected to maintain above a 3-month reserve through FY 2013-2014.

B. FY 2010/11 Budget

As of January 31, 2011, Professional Engineer's and Land Surveyor's Fund spent \$9,026,000 of the \$9,042,000 current year budget leaving a projected balance of \$106,000.

The Geology and Geophysics Fund spent \$839,000 of the \$1,330,000 current year budget leaving a projected balance of \$491,000.

C. FY 2011/12 Budget Change Proposals

Ms. Thompson stated the Spring Finance Letter for the Professional Engineers and Land Surveyors national exam administration was approved by both the Senate and Assembly budget committees and the next step is approval in the 2011 budget.

D. FY 2012/13 Budget Change Proposals

Two concept papers were submitted to the Department of Consumer Affairs. One to establish a Geologist Registrar position, and the other to increase funding for the Professional Engineers and Land Surveyors' Enforcement Program.

19. Technical Advisory Committees (TACs)

A. Board Assignments to TACs

No assignments made.

B. Appointment of TAC Members

Mr. Zinn indicated that there will be two appointments to the Geology TAC in July.

Mr. Tami recommended the reappointment of three Land Surveyor TAC members.

MOTION: Mr. Tami/Mr. Josephson moved to reappoint the following members to the LSTAC:

Mr. Michael B. Emmons, P.L.S. (1 year Re-appointment)

Mr. Michael S. Butcher, P.L.S. (1 year Re-appointment)

Mr. Paul J. Enneking, P.L.S. (2 year Re-appointment)

VOTE: 11-0, Motion carried.

C. Reports from the TACs

1. Report from the Geology TAC

Mr. Zinn inquired as to the frequency of the TAC meetings. Ms. Arnold stated that in the statutes, it does not indicate how often a TAC must meet. She added that it is dependent on the budget and travel restrictions.

2. Report from the Land Surveying TAC

a. Recommendation to Amend Business and Professions Code Section 8762 (b)(4)

Mr. Moore indicated that the LSTAC believes that clarification of the words "establish" and "establishment" as

they are used in the Professional Land Surveyors' Act is needed because there are multiple points of view within the surveying profession as to the meaning of the words. Some surveyors think that establishment happens when a deed is created and recorded. Others do not believe that establishment happens until the deed is actually surveyed on the ground the first time. There are other variations as well. This subject is prevalent when dealing with complaints. The TAC believes Business and Professions Code section 8762 (b)(4) should be clarified to clearly state the Board's interpretation in order to alleviate the number of enforcement cases.

The TAC recommends borrowing from the definition of land surveying in Business and Professions Code section 8726(c) and recommends that the Board direct staff to pursue legislation to amend Business and Profession Code section 8762(b)(4) as follows:

(4) Locates, relocates, establishes, reestablishes, or retraces ~~the establishment of~~ one or more points or lines not shown on any subdivision map, official map, or record of survey, the positions of which are not ascertainable from an inspection of the subdivision map, official map, or record of survey.

MOTION: Mr. Tami/Mr. Foley moved to direct staff to pursue legislation to amend Business and Professions Code section 8762.

VOTE: 11-0, Motion carried.

20. Liaison Reports

A. ASBOG

No report was given.

B. ABET

Ms. Eissler indicated that ABET visits are typically done in the fall.

C. NCEES

Mr. Tami stated that the Board has the ability to travel for free to Providence, Rhode Island, for the NCEES Annual Meeting. The Board is allowed one funded delegate and one first time attendee to attend the Annual Meeting. Ms. Thompson indicated that the request for approval to attend was denied.

1. Appointment of Emeritus Members

MOTION: Mr. Tami/Mr. Silva moved to appoint Mr. Foley and Gregg Brandow as emeritus members to NCEES.

VOTE: 11-0, Motion carried.

D. Technical and Professional Societies

Mr. Tami spoke to the senior class of engineering at Cal Poly San Luis Obispo, and Mr. Zinn will speak at the Chief Building Official meeting in Monterey.

21. President's Report/Board Member Activities

President Modugno expressed his appreciation to the Department of Consumer Affairs for the monthly conference calls. He added that they are a very effective way of communication.

President Modugno presented Mr. Foley with a Senate Resolution and a Board Proclamation for his services to the Board as it is his last Board meeting.

22. Other Items Not Requiring Board Action

A. Date of Next Board Meeting: July 21, 2011, Sacramento, California

23. Approval of Consent

(These items are before the Board for consent and will be approved with a single motion following the completion of Closed Session. Any item that a Board member wishes to discuss will be removed from the consent items and considered separately.)

A. Approval of the Minutes of the March 24 & 25, 2011, Board Meeting

MOTION: Mr. Satorre/Mr. Zinn moved to approve the minutes.

VOTE: 11-0, Motion carried.

6. Closed Session

Personnel Matters, Examination Procedures and Results, Administrative Adjudication, and Pending Litigation (As Needed) [Pursuant to Government Code sections 11126(a) and (b), 11126(c)(1), 11126(c)(3), 11126 (e)(1), and 11126(e)(2)(B)(i)]

A. Rodolfo Dimalanta v. Board for Professional Engineers and Land Surveyors, Court of Appeal, First Appellate District, Case No. A131485 [Superior Court of Alameda County Case No. RG10513640]

The Board recessed at 3:55 p.m.

Friday, May 13, 2011, beginning at 9:03 a.m.

Board Members Present: Mike Modugno, President; Jerry Silva, Vice President; James Foley; Carl Josephson; Philip Quartararo; Hong Boem Rhee; Ray Satorre; Patrick Tami; Michael Trujillo; Paul Wilburn; and Erik Zinn.

Board Members Absent: None

Board Staff Present: Joanne Arnold (Acting Executive Officer); Linda Brown (Administrative Manager); Nancy Eissler (Enforcement Manager); Larry Kereszt (Enforcement Analyst); Tiffany Criswell (Enforcement Analyst); Joyce Hirano (Staff Civil Engineer); Ric Moore (Staff Land Surveyor); Debbie Thompson (Budget Analyst); and Gary Duke (Legal Counsel).

1. Roll Call to Establish a Quorum

The meeting was called to order by President Mike Modugno at 9:03 a.m. Roll call was taken, and a quorum was established.

2. Public Comment

Ms. Kanemoto representing the Executive Office of the Department of Consumer Affairs updated the Board on some issues that were brought up the day before. Teleconferencing was suggested to conduct TAC meetings. The Department can assist in locations for teleconferencing for members to go to engage in a teleconference call. The TAC members would be reimbursed for travel from home to that location. The Department would like the TAC to adhere to the teleconference method. The Contracts Unit has been instructed to expedite the NCEES contract. The Department of General Services has 10 days to review. President Modugno thanked Ms. Kanemoto for her attendance yesterday and returning today to provide answers to questions.

Mr. Satorre arrived at 9:06 a.m., and Mr. Trujillo arrived at 9:08 a.m.

President Modugno would like to submit letters supporting Board Members for reappointment.

6. Closed Session

Personnel Matters, Examination Procedures and Results, Administrative Adjudication, and Pending Litigation (As Needed) [Pursuant to Government Code sections 11126(a) and (b), 11126(c)(1), 11126(c)(3), 11126 (e)(1), and 11126(e)(2)(B)(i)]

B. Executive Officer Interviews

7. **Open Session to Announce the Results of Closed Session**

Ms. Eissler reported that the Board in Closed Session on Thursday took action on stipulations and petitions for reconsideration, discussed litigation as noticed and discussed examination procedures and results. Mr. Duke reported that the Board in Closed Session on Friday interviewed four candidates for the Executive Officer position.

4. **Continued Regulation of the Practice of Geophysics and Licensure of Professional Geophysicists**

MOTION: Mr. Tami/Mr. Foley moved as follows:

If the Geophysicists Subcommittee decides to recommend to keep things the way they are and to monitor things for a while, then the Board gives the Subcommittee the authority to provide that information to Ms. Arnold to provide to the Senate Business, Professions and Economic Development Committee; if the Subcommittee has any other recommendation, then it will present that recommendation to the Board at the July meeting

VOTE: 11-0, Motion carried.

24. **Adjourn**

Meeting adjourned at 2:45 p.m.

PUBLIC PRESENT

Cindy Kanemoto, Department of Consumer Affairs

Tom Barry, San Francisco AEG and Northern California Geological Society

Bob DeWitt, ACEC

Richard Markson, ASCE

Bill Black, Northern California Geophysical Consultants

Ken Blum, NorCal Geophysical Consultants

Mark Riches, Geovision Geophysical Services

Bill Owen, Department of Transportation

Steve Sterling, Department of Toxic Substance Control

Craig Copelan, PECG

Hans Honeybrook, Southwest Geophysics

Bob Holmgren, OPES